

CBO TESTIMONY

Statement of
Dan L. Crippen
Director

CBO's Activities Under the Unfunded Mandates Reform Act

before the
Subcommittee on Technology and the House
Committee on Rules
and the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives

May 24, 2001

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time.*

20020314 057



CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

AQI 02-06-0989

INTERNET DOCUMENT INFORMATION FORM

A . Report Title: CBO Testimony: Statement of Dan L. Crippen, Director CBO's Activities Under the Unfunded Mandates Reform Act Before the Subcommittee on Technology and the House Committee on Rules and the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs Committee on Government Reform, U.S. House of Representatives

B. DATE Report Downloaded From the Internet: 03/13/02

C. Report's Point of Contact: (Name, Organization, Address, Office Symbol, & Ph #): Congressional Budget Office
Second and D Streets, SW
Washington, DC 20515

D. Currently Applicable Classification Level: Unclassified

E. Distribution Statement A: Approved for Public Release

F. The foregoing information was compiled and provided by:
DTIC-OCA, Initials: VM Preparation Date 03/13/02

The foregoing information should exactly correspond to the Title, Report Number, and the Date on the accompanying report document. If there are mismatches, or other questions, contact the above OCA Representative for resolution.

Mr. Chairmen and Members of the Subcommittees, I am pleased to be here today to discuss the activities of the Congressional Budget Office (CBO) under the Unfunded Mandates Reform Act (UMRA). CBO's report on UMRA's first five years is being released at this hearing, and my statement this morning will summarize that report's major conclusions.

The Unfunded Mandates Reform Act was designed to focus more attention on the costs of mandates that the federal government imposes on other levels of government and the private sector. UMRA's supporters had many goals for the legislation, including ensuring that the Congress had information about the costs of mandates before it decided whether to impose them, and encouraging the federal government to provide funding to cover the costs of intergovernmental mandates.

To accomplish those goals, title I of UMRA established requirements for reporting on federal mandates and set up new legislative procedures. Under the law, the House and Senate are prohibited from considering legislation that contains mandates unless certain conditions are met. For example, consideration of a reported bill is not in order unless the committee reporting the bill has published a CBO statement about the costs of any private-sector or intergovernmental mandates in the bill. In addition, Members of Congress may raise a point of order against legislation that would create an intergovernmental mandate over the cost threshold specified in UMRA, unless the legislation provides funding to cover those costs. Such procedural requirements do not stop the Congress from passing bills it wants to pass, but they can raise the stakes in deliberating unfunded mandates.

In the five years since UMRA took effect, both the amount of information about mandate costs and interest in that information have increased considerably. As a result, numerous pieces of legislation that originally contained significant unfunded mandates were amended to either eliminate the mandate altogether or lower the costs of the mandate. In many of those cases—such as a requirement that driver's licenses show Social Security numbers, a

moratorium on certain taxes on Internet services, preemptions of state securities fees, and requirements in the farm bill affecting the contents of milk—it was clear that information provided by CBO played a role in the Congress's decision to reduce costs. In that respect, as well as in increasing the supply of and demand for information about mandates, title I of UMRA has proved to be effective.

TRENDS IN FEDERAL MANDATES UNDER UMRA

Title I of UMRA requires CBO to prepare a mandate statement for bills approved by authorizing committees. The law requires CBO to address whether a bill contains federal mandates and, if so, whether the direct costs of those mandates would be greater than the thresholds established in UMRA. Those thresholds, which are adjusted annually for inflation, are costs of \$50 million or more per year to the public sector (state, local, or tribal governments) or \$100 million or more per year to the private sector in 1996 dollars.

Since 1996, CBO has provided mandate cost statements for nearly all of the bills reported by authorizing committees. It has also given information about mandates to Members and Congressional staff at other stages in the legislative process.

Over the past half decade, several patterns about federal mandates and their costs have become clear.

- Most of the legislation that the Congress considered between 1996 and 2000 did not contain federal mandates as UMRA defines them. Of the more than 3,000 bills and other legislative proposals that CBO reviewed during that period, 12 percent contained intergovernmental mandates and 14 percent contained private-sector mandates (see Table 1).

TABLE 1. NUMBER OF CBO MANDATE STATEMENTS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS, 1996-2000

	1996	1997	1998	1999	2000	Five-Year Total
Intergovernmental Mandates						
Total Number of Statements Transmitted	718	521	541	573	706	3,059
Number of Statements That Identified Mandates	69	64	64	81	77	355
Mandate costs would exceed threshold ^a	11	8	6	4	3	32
Mandate costs could not be estimated	6	7	7	0	1	21
Private-Sector Mandates						
Total Number of Statements Transmitted	673	498	525	556	697	2,949
Number of Statements That Identified Mandates	91	65	75	105	86	422
Mandate costs would exceed threshold ^a	38	18	18	20	6	100
Mandate costs could not be estimated	2	5	9	13	7	36

SOURCE: Congressional Budget Office.

NOTE: The numbers in this table represent official mandate statements transmitted to the Congress by CBO. CBO prepared more intergovernmental mandate statements than private-sector mandate statements because in some cases it was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. In those cases, no private-sector analysis was transmitted to the requesting Member or committee. CBO also completed a number of preliminary reviews and informal estimates for other legislative proposals that are not included in this table. Mandate statements may cover more than one mandate provision, and occasionally, more than one formal CBO statement is issued for each mandate topic.

a. The thresholds, which are adjusted annually for inflation, were \$50 million for intergovernmental mandates and \$100 million for private-sector mandates in 1996. They rose to \$55 million and \$109 million, respectively, in 2000.

- Most of those mandates would not have imposed costs greater than the thresholds set by UMRA. Only 32 of the bills with intergovernmental mandates had annual costs of \$50 million or more, by CBO's estimate. (Over half of the intergovernmental mandates that CBO identified were explicit preemptions of state or local authority. In most of those cases, the costs to comply with the preemptions were not significant.) Some 100 of the bills with private-sector mandates had costs of more

than \$100 million a year. Few of the bills with either kind of mandate, however, contained federal funding to offset the costs of the mandates.

- Although the percentage of bills containing a federal mandate stayed fairly constant over the past five years, the percentage of bills with mandates over the statutory thresholds declined steadily. Bills with intergovernmental mandates above the threshold decreased from about 2 percent in 1996 to less than 1 percent in 2000, and bills with private-sector mandates above the threshold dropped from almost 6 percent in 1996 to less than 1 percent in 2000.
- Few mandates with costs over the UMRA thresholds were enacted in the past five years. Only two intergovernmental mandates with annual costs of at least \$50 million became law—an increase in the minimum wage (in 1996) and a reduction in federal funding to administer the Food Stamp program (in 1997). Those enacted mandates represent less than 1 percent of the intergovernmental mandates that the Congress has considered since UMRA took effect.

Sixteen private-sector mandates reviewed by CBO with costs over the \$100 million threshold were enacted. Of those, eight involved taxes, three concerned health insurance (requiring portability of insurance coverage, minimum maternity stays, and changes in Medicare coverage), two dealt with regulation of industries (telecommunications reform and changes in milk pricing), two affected workers' take-home pay (increases in the minimum wage and in federal employees' contributions for retirement), and one imposed new requirements on sponsors of immigrants.

- In some cases, lawmakers have altered legislative proposals to reduce the costs of federal mandates before enacting them. Four intergovernmental and five private-sector mandates that CBO identified as having costs over the thresholds when they were approved by authorizing committees were amended before enactment to bring their costs below the thresholds.

THE NARROW SCOPE OF UMRA

The numbers presented here should be viewed in light of the fact that UMRA defines federal mandates narrowly. According to UMRA, the conditions attached to most forms of federal assistance (including most entitlement grant programs) are not mandates. In some cases, complying with such conditions of aid can be costly. For example, the Department of Transportation's appropriation act for fiscal year 2001 contained a provision known as the ".08 National Drunk Driving Standard." Under that provision, states will have four years to adopt a blood alcohol content of 0.08 as their standard for drunk driving without incurring penalties. If they do not adopt that standard by 2004, they will lose 2 percent of their federal highway funds, rising to 8 percent by 2007. In all, states could lose as much as several hundred million dollars in highway funds. Although such a requirement is clearly a condition for receiving federal assistance—and thus is not considered a mandate under UMRA—states often think of such new conditions on existing grant programs as duties not unlike mandates.

Between 1996 and 2000, CBO identified more than 450 bills that would impose those types of “nonmandate” costs on state, local, or tribal governments. In most cases, however, CBO estimated that such costs would not be significant. During that period, CBO also identified numerous bills that would benefit state, local, or tribal governments.

UMRA requires CBO to estimate the direct costs that entities affected by mandates will bear. But federal mandates also impose indirect costs, including the effects on prices and wages when the costs of a mandate imposed on one party are passed along to other parties, such as customers or employees. Those effects of federal legislation on other levels of government and the private sector are not subject to the requirements of UMRA. Nevertheless, CBO includes information about significant indirect effects in some of its cost statements for mandates over the threshold. When sufficient time and data are available, it also provides quantitative estimates of the size of those effects. For example, CBO analyzed the indirect effects of proposed mental health parity requirements, including possible reductions in workers' take-home pay, health insurance coverage, and fringe benefits. Similarly, CBO's analysis of proposed increases in the minimum wage included the possible impact on employment of low-wage workers.

The scope of UMRA is further narrowed by the fact that the law does not apply to legislative provisions that deal with constitutional rights, discrimination, emergency aid, accounting and auditing procedures for grants, national security, treaty ratification, and title II of Social Security (Old-Age, Survivors, and Disability Insurance benefits). Roughly 5 percent of the bills that CBO reviewed in the past five years contained provisions that fit within those exclusions. Many of them addressed constitutional rights or national security issues.

CHALLENGES TO CBO IN IMPLEMENTING UMRA

Determining what constitutes a mandate under UMRA can be complicated. For example, the law defines a mandate as "an enforceable duty except . . . a duty arising from participation in a voluntary federal program." Although an activity (such as sponsoring an immigrant's entry into the United States) may be voluntary, the federal program affecting

that activity (immigration laws) is not. In that case, a bill imposing new requirements on the sponsors of immigrants would constitute a mandate under UMRA. In contrast, other federal programs that are truly voluntary in nature may impose requirements on their participants that, by UMRA's definition, are not mandates. Those distinctions between what is voluntary and what is mandatory are not always clear.

Even when CBO determines that a legislative proposal contains a federal mandate, the agency faces numerous challenges in estimating the costs of the mandate. In some cases, accurately determining how many state and local governments or entities in the private sector would be affected by a mandate is impossible. In other cases, the entities that would be subject to a particular mandate are diverse and would not be affected uniformly, making it difficult to total the incremental costs of compliance for all parties that would be affected. In other instances, it may be impossible to estimate the costs of a mandate at the legislative stage, before regulations to implement it have been developed. Even the mandated parties may not be able to estimate costs reliably without knowing what the regulations to carry out the mandate will entail.

Fortunately, UMRA requires CBO to determine whether the costs of complying with mandates would exceed specific thresholds and to provide cost estimates only for mandates that would do so. If UMRA required CBO to provide more-detailed estimates for each mandate, the agency's job would be considerably more difficult and time consuming.

PROPOSALS TO EXPAND UMRA

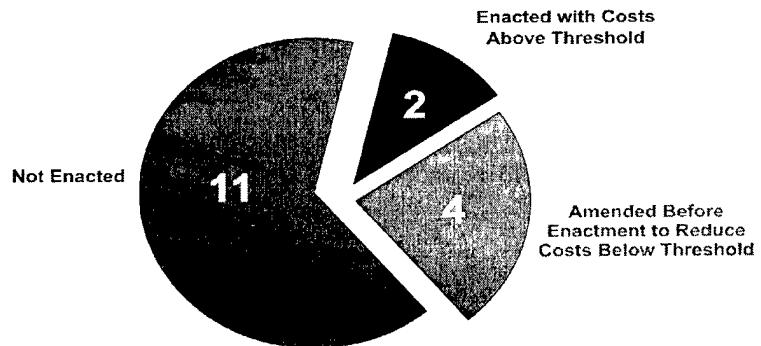
Since UMRA was enacted, lawmakers have proposed expanding title I in several ways. One proposal would build on UMRA's perceived success in focusing Congressional attention on unfunded intergovernmental mandates by expanding the law to include a point

of order against bills that contain private-sector mandates with costs over the statutory threshold (similar to the current point-of-order requirement for intergovernmental mandates). Other proposals would expand UMRA's definition of a mandate as it relates to large federal entitlement programs administered by state or local governments. Both of those proposals were included in the Mandates Information Act, which was considered by the Congress in 1998 and 1999 but never enacted.

To date, lawmakers have made only one, relatively minor, change to UMRA. The State Flexibility Clarification Act of 1999 (Public Law 106-141) requires authorizing committees and CBO to provide more information in committee reports and mandate statements for legislation that would "place caps upon, or otherwise decrease, the federal government's responsibility to provide funding to state, local, or tribal governments" under certain large entitlement grant programs (such as legislation that would cap the federal contribution to Medicaid). In general, that requirement for additional information applies to few bills, and no legislation reported by authorizing committees since the requirement was enacted has been affected by it.

In closing, Mr. Chairmen, I would say that title I of UMRA has generally worked. It is clear that information provided by CBO about mandates has played an important role in the legislative process.

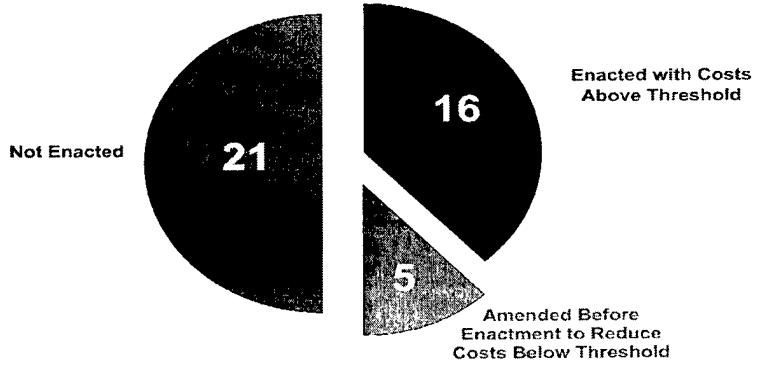
 **17 Intergovernmental Mandates with Costs Above the Threshold (\$50 million per year)**



(The 32 bills that CBO identified between 1996 and 2000 as having intergovernmental mandates above the threshold contained 17 separate mandates.)

UMRA1-501

 **42 Private-Sector Mandates with Costs Above the Threshold (\$100 million per year)**



(The 100 bills that CBO identified between 1996 and 2000 as having private-sector mandates above the threshold contained 42 separate mandates.)

UMRA2-501